

# **Interim Report**

to the

**Vermont Public Service Board**

on the

**Energy Efficiency Utility  
Structure Working Group**

by

Board staff

Ann Bishop and Ed McNamara

Draft of January 4, 2008

## **Table of Contents**

Executive Summary .....	2
Purpose of this Report .....	4
Background/History .....	5
Working Group Operations .....	6
Topics Discussed .....	8
Consideration of Different Structural Models .....	8
Appointment Model .....	11
Appointment Mechanism .....	12
Performance Based .....	14
Appointment Term .....	17
Transition to New Structure .....	19
Number of Entities that Serve as the EEU .....	20
Roles of Various Entities .....	21
Compensation .....	23
"Independent" Issues .....	24
Appendix A — EEU Structure	
Appendix B — Revised Task Statement for Discussion of EEU Structure	
Appendix C — E-mail Service List for EEU Structure Working Group	
Appendix D — List of EEU Structure Working Group Active Participants	
Appendix E — Descriptions of Some Structural Models	
Appendix F — Matrix of Functions and Services, 10/20/07 version	
Appendix G — Draft Recommendation for a New EEU Structure, 12/10/07 version	
Appendix H — Planning and Assessment Review Cycles for EEU	

## **Executive Summary**

This is an Interim Report to the Public Service Board ("Board") on the activities of the Energy Efficiency Utility Structure Working Group ("Working Group"). The Working Group was convened by the Board in July 2007 to explore possible changes to the structure of Vermont Energy Efficiency Utility ("EEU"). The Working Group has been coordinated by Board staff Ann Bishop and Ed McNamara. Working Group discussions are ongoing and participants have not yet taken formal positions. This report focuses on issues associated with changing the current short-term contract model, although other issues raised by participants are briefly discussed.

When the Board convened the Working Group, it recognized that the current EEU program structure has served Vermont well over the last seven years; however, over that time the EEU program has matured and the environment in which the EEU operates has changed. As a result, the Board identified several aspects of the current EEU program structure that may require modification to address these circumstances. Specifically, the Board noted that the current three-year contract cycle is problematic, and the fact that the Board oversees the EEU through a contract (regardless of the length of the contract) creates challenges.

The Board solicited comments from a wide variety of interested persons and created an open Working Group to consider what type of alternative electric EEU structure could address the issues identified by the Board while preserving the strengths of the current EEU program. The Working Group met nine times in 2007 (additional meetings are scheduled for 2008), and Working Group participants prepared various documents and provided written comments on several issues throughout the fall.

Working Group participants briefly discussed eight possible structural models, and considered information regarding some other states' models for delivering energy efficiency. While no models were explicitly eliminated from further consideration, participants eventually began to focus exclusively on defining an appointment model in more detail.

To facilitate discussions about the appointment model, a subset of Working Group participants developed a Draft Recommendation for a New Energy Efficiency Utility Structure ("Draft Appointment Model"). The Draft Appointment Model recommends that the Board

develop an appointment model that is largely based on the current performance-based model but does not involve a contract between the Board and the entity administering the EEU.<sup>1</sup> The Draft Appointment Model includes the following features:

- the Board would issue an Order of Appointment under its existing statutory authority, and while the EEU would not be a "company" as defined by Title 30, it would be subject to certain requirements of Title 30 related to regulatory oversight by the Board and the Department;
- the Board would continue to set budgets, savings goals, and performance indicators; however, short-term and long-term budgets and savings goals would be established simultaneously, and a public process (instead of contract negotiations) would be used to determine performance indicators;
- every six years the Board would conduct a performance assessment of the EEU to determine whether there would likely be net benefits from soliciting competitive offers, with the presumption that the EEU would not be replaced unless it was not performing well; every 12 years the Board would solicit competitive offers, unless the Board determined that the benefits likely to result from the solicitation process were not worth the cost of going to the market at that time; in addition, at any time, any party could request that the Board review the appointment;
- the Board would appoint the entities currently providing EEU services to continue delivering those services during the transition to the new structure;
- the Board could appoint one or more entities to serve as the EEU;
- the roles and responsibilities of the Board, the Vermont Department of Public Service ("Department"), and the EEU would alter somewhat; the Board and the Department would have regulatory responsibilities similar to those that they exercise over other utilities, and the EEU would be able to participate in Board proceedings and lobby before the legislature in a manner similar to other parties; and
- an EEU would receive two types of compensation, one for resource acquisition activities that would be performance-based, the second for other types of activities that would be cost-of-service based and subject to budget caps.

---

<sup>1</sup>The Draft Appointment Model also addresses many issues that are independent of a possible change from a short-term-contract model to an appointment model. Those issues which Working Group participants have begun to discuss are briefly addressed in the last section of this report; other aspects of the Draft Appointment Model which Working Group participants have not yet discussed are not addressed in this report.

Working Group discussions regarding the Draft Appointment Model are ongoing; no participant has taken a formal position regarding the model.

This report discusses advantages and disadvantages of the various key characteristics of the appointment model as set forth in the Draft Appointment Model, and identifies whether consensus has developed around the various aspects of the Draft Appointment Model. In addition, it identifies significant issues that have been raised by Working Group participants.

Finally, the report notes the importance of caution in the Board's exercise of its authority to change from the current contract model to an appointment model. Several Working Group participants have contended that no statutory change is required for the Board to alter the existing structure and selection process of the entity serving as the EEU as contemplated in the Draft Appointment Model. However, there is also the possibility that a court challenge could overturn that particular appointment mechanism as beyond the scope of the Board's authority. If this were to occur, it could severely disrupt the provision of energy efficiency services and impose significant costs on Vermont ratepayers. Accordingly, if state policymakers conclude that a change to the appointment model is desirable, it would be preferable for the Board's statutory authority to be clarified by legislation.<sup>2</sup>

### **Purpose of this Report**

This is an Interim Report to the Board on the activities of the Energy Efficiency Utility Structure Working Group. The Working Group was convened by the Board in July 2007, and has been coordinated by Board staff Ann Bishop and Ed McNamara. The Board originally asked us to make every effort to conclude the Working Group's discussions by the end of 2007. However, in November 2007 Working Group participants requested that the Board allow the Working Group to continue its activities in 2008 because participants believed further

---

<sup>2</sup>Although this report is intended to provide information to the Board rather than recommendations, staff believes that the question of whether the Board has the authority to implement an appointment model absent legislation is particularly important in light of the potential for significant adverse consequences.

discussions would be useful. As a result, we agreed to prepare an Interim Report for the Board on the Working Group's activities through mid-December 2007.

This Interim Report is our summary of the issues considered by the Working Group. In most cases, it does not attribute specific positions to particular Working Group participants. This is because Working Group discussions are ongoing and participants have not yet taken formal positions. Nevertheless, based on the discussions, it is possible to identify areas where consensus appears to be emerging, as well as areas where, at the end of 2007, significant differences remain among the participants. In this Interim Report, we identify both types of these areas. However, it would be premature at this point to conclude that Working Group participants will or will not reach agreement on any particular issue; that will not be known until the Working Group concludes its discussions.

It is also important to point out that, while the Working Group has discussed a wide variety of issues, some issues have been more fully explored than others. In particular, issues associated with changing the current contract model to an appointment model have been addressed in more detail than issues that are independent of that decision. The structure of this report reflects this; the primary focus is on issues associated with changing the current contract model, although other issues raised by participants are briefly discussed.

### **Background/History**

The EEU has been in operation since March 2000. The current EEU structure was the result of collaborative discussions that led to a comprehensive settlement among many parties, which the Board later approved. Under the current structure, the Board enters into a three-year performance-based contract, which includes the opportunity to renew the contract for up to an additional three years, with the entity selected via a competitive solicitation to serve as the EEU (which operates under the tradename Efficiency Vermont). In addition, the City of Burlington Electric Department ("BED") delivers EEU services in its service territory. Other elements of the current structure include: a Contract Administrator and a Fiscal Agent, both of whom are contractors to the Board; the Vermont Department of Public Service ("Department"), which

evaluates the EEU and verifies the savings that it achieves; the electric distribution utilities, which collect the Energy Efficiency Charge; and the EEU Advisory Committee, which serves as a two-way channel of communication between stakeholders and the EEU. Appendix A provides additional information about these entities' roles in the current structure.

The current EEU program structure has served Vermont well over the last seven years. The EEU's performance has exceeded expectations, and it has been recognized nationally as an innovative government program.

However, over that time the EEU program has matured, and the environment in which the EEU operates has changed. As a result, the Board identified several aspects of the current EEU program structure that may require modification to address these circumstances. Specifically, the Board noted that the current three-year contract cycle is problematic, and the fact that the Board oversees the EEU through a contract (regardless of the length of the contract) creates challenges. These issues are described in greater detail in the Revised Task Statement for Discussion of EEU Structure that is attached to this report as Appendix B.

Therefore, the Board solicited comments from interested persons and created an open Working Group to consider what type of alternative electric EEU structure could address the issues identified by the Board while preserving the strengths of the current EEU program. The Board encouraged participants to think creatively about the best possible model for Vermont's electric EEU program, even if such a model would require legislative changes to implement.

### **Working Group Operations**

The Working Group is open to all interested persons. Initial notice of the Working Group was provided to all parties to Docket 5980 (the Board's investigation that established the EEU), Docket 7081 (the Board's investigation into transmission planning), and an e-mail service list of those who had previously expressed interest in matters related to the EEU.

The Board's initial notice of the Working Group addressed the issue of how the contractor serving as Efficiency Vermont should participate in the Working Group. The Board noted that it had generally restricted Efficiency Vermont's participation in Board proceedings to technical

support and comments on the effects of issues and options under consideration on Efficiency Vermont's operations.<sup>3</sup> However, the Board stated that it believed it would be helpful to remove this restriction for the Working Group, because the discussion would focus on a possible fundamental change in the EEU program structure, and because it would be extremely valuable to hear the operator's perspective on the possible improvements.

The Board provided all interested persons with an opportunity to comment on this proposed approach. After considering parties' written and oral comments regarding this issue, the Board issued a memorandum on August 14, 2007, stating that Vermont Energy Investment Corporation ("VEIC"), the entity serving as Efficiency Vermont, may participate in activities related to this topic in the same manner as any other party, including making whatever policy recommendations it chooses regarding the EEU program structure.

The Board has sought to make information about the Working Group's activities widely accessible. To facilitate this, the Board is maintaining a web page for the Working Group (<http://www.state.vt.us/psb/EEU/WorkingGroup/main.htm>) on which it posts all Board notices, orders, and memoranda related to the Working Group as well as documents circulated by participants. In addition, the Board is maintaining an e-mail service list for the Working Group. Anyone interested in the Working Group's activities can be added to the service list.

As of December 31, 2007, the e-mail list for the Working Group included over 100 names from a variety of stakeholders, including utilities, consumer groups, energy-efficiency providers, state agencies, environmental advocates, and others. The e-mail list is attached to this report as Appendix C. Not all members of the e-mail list participated actively in the Working Group's activities; a list of those who filed written comments or attended at least two of the Working Group's meetings is attached to this report as Appendix D.

---

<sup>3</sup>The reason the Board restricted Efficiency Vermont's participation was to avoid even the perception of a conflict of interest resulting from the Board's contractual relationship with the entity serving as Efficiency Vermont.



The Working Group met nine times in 2007 (additional meetings are scheduled for 2008); transcripts were made of each meeting. All meetings were led by Board staff; Board Chairman James Volz attended most of the Working Group's meetings.

In addition, Working Group participants prepared various documents and provided written comments on several issues throughout the fall. These documents are posted to the Working Group's web page identified above.

### *Topics Discussed*

The Working Group began its discussions by considering the Task Statement for Discussion of EEU Structure that the Board attached to its July 13, 2007, memorandum convening the Working Group. The Task Statement was later revised to include goals for any new EEU structures that were identified by Working Group participants. These goals were not necessarily agreed to by all participants; nevertheless, the list of the goals will be helpful in evaluating potential EEU structures. The Revised Task Statement is attached to this report as Appendix B.

Other topics addressed by the Working Group include:

- strengths and weaknesses of the current EEU structure;
- consideration of various possible structural models;
- how various EEU program functions would be performed under different possible EEU structural models; and
- draft recommendation for a revised EEU structure.

### **Consideration of Different Structural Models**

Brief descriptions of eight structural models were attached to the Board's memorandum convening the Working Group. The eight models are: franchise with an indefinite term, franchise with a definite term, separate legal entity, short-term contract (which is the current EEU program model), long-term contract, joint action agency, governmental body, and direct administration. Descriptions of these models are attached to this report as Appendix E.

The models can be thought of as ranging along a continuum from less to more direct governmental involvement in delivering energy efficiency services. However, the descriptions were not intended to be fully developed options. The Board recognized that there are many possible variations to each model, and many issues related to the EEU program structure were not addressed in the descriptions. However, the Board intended that the brief descriptions could serve as a foundation for an initial discussion of advantages and disadvantages of the various models.

Workshop participants briefly discussed all eight structural models, and obtained materials from a few other states describing their models for delivering energy efficiency. Participants reviewed a draft comparison of the Maine, New York, Oregon, Wisconsin, and Vermont models that was prepared by VEIC. Workshop participants expressed interest in comparing the performance of entities in different states. However, it was noted that such comparisons are very difficult to make. Nevertheless, such comparative information as was available from other organizations was provided to the Working Group.

The state whose model the Working Group discussed the most was Oregon. The Oregon Energy Trust is a separate legal entity that competitively bids the delivery of most energy efficiency services and has long-term (10-year) resource acquisition goals. Some workshop participants believed the competitive bidding used in the Oregon model would encourage greater innovation in the delivery of energy efficiency services and facilitate market transformation, although they recognized that under this model it can be difficult to coordinate numerous contractors. Other workshop participants noted that both the Oregon Energy Trust and Efficiency Vermont used contractors to deliver energy efficiency services, and the difference between the two entities in this area was less than others believed.

While no models were explicitly eliminated from further consideration, discussion soon focused on two basic approaches as the most likely possible alternative structures — a long-term

contract model and an appointment model.<sup>4</sup> Participants discussed what each of these models would consist of, and how they would be different from the current short-term contract model. As part of these discussions, participants collaboratively developed a list of functions related to the EEU program (some of the functions are currently performed by the EEU, while others are performed by other entities). There was considerable consensus among Working Group participants that it was appropriate to consider how each of these functions would be performed under the two new models being discussed. As a result, participants developed a matrix to concisely compare the two new models and the current model. This matrix helped structure the discussions at several Working Group meetings.

After further discussions, participants began to focus exclusively on defining an appointment model in more detail. In part this was because participants understood the differences between the long-term contract model and the current model, while participants did not yet have a clear picture of what the appointment model would be like. Participants revised the matrix to compare the current model with an appointment model, and to identify outstanding issues related to an appointment model. The last version of this matrix (dated October 20, 2007) is attached to this report as Appendix F. Note that discussions continued after this version of the matrix was prepared. As a result, the matrix does not accurately represent the areas of potential consensus and outstanding issues as of the end of 2007. Nevertheless, it provides useful information about the issues considered by Working Group participants in 2007.

The matrix identifies nine broad categories of issues: legal basis; governance and oversight; term; performance assurance; program planning and implementation; resource planning; evaluation; budget; and scope of EEU. Many, but not all, of the issues included in the matrix would be directly affected by a change from the current model to an appointment model. These are the areas that were most discussed by participants.

---

<sup>4</sup>The appointment model is in some ways similar to the franchise models originally identified by the Board. However, because there is no clear definition of the term "franchise," Working Group participants began to use the term "appointment" instead.

Some of the issues included in the matrix can be considered to be independent from the fundamental question of whether to continue to use the short-term contract model or to change to a different model. For example, as a result of the settlement agreement regarding transmission planning in Docket 7081, it is necessary for the Board to change the EEU's role in long-term transmission planning; this change can be made under the current EEU program structure. While participants had initial discussions regarding these "independent" issues, they have not yet been fully explored because Working Group participants chose to focus first on those issues most directly related to changing the overall EEU program structure.

### **Appointment Model**

A number of Working Group participants jointly developed a Draft of a Recommendation for a New Energy Efficiency Utility Structure ("Draft Appointment Model"). The most recent version of the Draft Appointment Model is attached to this report as Appendix G. In addition, the Draft Model Appointment includes a timeline depicting planning and assessment review cycles for the EEU, as they would occur under the Draft Appointment Model; this timeline is attached to this report as Appendix H. Versions of this Draft Appointment Model have been discussed at two Working Group meetings, although at this point, no participant has taken a formal position on the document. As described further below, the Draft Appointment Model envisions the creation of an appointment model by the Board that is largely based on the current performance-based model but does not involve a contract between the Board and the entity administering the EEU.

The Draft Appointment Model also addresses many issues that are independent of a possible change from a short-term contract model to an appointment model. Only those issues related to the creation of an appointment model are addressed in this section. Some of the "independent" issues are briefly addressed in the next section.<sup>5</sup>

---

<sup>5</sup>Most of Part V and portions of Part VI of the Draft Appointment Model are not addressed at all in this report. The language in these parts comes from the Board's current contract with VEIC and Working Group participants have not discussed these provisions.

Below, we identify the key characteristics of the Draft Appointment Model, the strengths and weaknesses of each characteristic, and whether consensus appears to be emerging regarding each characteristic.

### Appointment Mechanism

The Draft Appointment Model recommends that the Board issue an Order of Appointment "under its existing authority conferred pursuant to 30 V.S.A. § 209(d)(2)."<sup>6</sup> The Draft Appointment Model further provides that the EEU should not be a "company," as defined by 30 V.S.A. § 201 as a result of becoming subject to an Order of Appointment, although the appointed EEU "may not abandon or curtail any responsibilities associated with the appointment without first obtaining the approval of the Board."<sup>7</sup> In addition, the Draft Appointment Model provides that the EEU would be subject to certain requirements of Title 30.

The Board's authority to create the EEU is found in 30 V.S.A. § 209(d)(2), which states:

In place of utility-specific programs developed pursuant to section 218c of this title, the board may, after notice and opportunity for hearing, provide for the development, implementation, and monitoring of gas and electric energy efficiency and conservation programs and measures including programs and measures delivered in multiple service territories, by one or more entities appointed by the Board for these purposes.

Some participants have noted that the statute authorizing the EEU is broadly worded and does not specify the relationship between the Board and the entity serving as the EEU. The statute also does not specify the legal mechanism for the Board to develop an energy efficiency program, beyond the requirement that contested-case procedures be utilized.<sup>8</sup> These participants have contended that no statutory change is required for the Board to alter the existing structure

---

<sup>6</sup>Draft Appointment Model at 3.

<sup>7</sup>Draft Appointment Model at 3.

<sup>8</sup>The current structure and selection mechanism was created through a lengthy contested-case process, culminating in a Memorandum of Understanding among the electric distribution utilities, the Department, and other interested parties.

and selection process of the entity serving as the EEU as contemplated in the Draft Appointment Model. While many participants have not expressed an opinion on this issue, no participants have argued that statutory changes would be required for the Board to implement an appointment model as provided in the Draft Appointment Model.

However, given the significance of the EEU program, the Board's authority to change from the current contract model to an appointment model should be exercised cautiously. The Vermont Supreme Court provides some measure of deference to Board actions; however, this deference is greater with respect to the Board's findings of fact than it is to the Board's conclusions of law. Accordingly, although the statute appears to provide the Board with broad discretion, there is also the possibility that a court challenge could overturn this particular appointment mechanism as beyond the scope of the Board's authority. If this were to occur, it could severely disrupt the provision of energy efficiency services and impose significant costs on Vermont ratepayers. If state policymakers conclude that a change to the appointment model is desirable, it would be preferable for the Board's statutory authority to be clarified by legislation. Although this report is intended to provide information to the Board rather than recommendations, staff believes that the question of whether the Board has the authority to implement an appointment model absent legislation is particularly important in light of the potential for significant adverse consequences.

Another issue related to the appointment mechanism is the type of regulatory oversight that would be exercised over an appointed EEU. Currently, Title 30 provides for the application of certain statutory provisions to any "company" as defined by Sections 201 and 203. These provisions provide the Board and the Department with authority over certain actions by such companies. The Department has proposed that any appointed EEU would be subject to specific sections of Title 30 in order to provide regulatory oversight of an appointed EEU similar to that exercised over utility companies. There appears to be consensus among Working Group participants that such oversight is appropriate.

Performance Based

The Draft Appointment Model envisions a performance-based model that is, in some respects, similar to the existing model. Budgets, goals, and performance indicators would still be set by the Board; however, the procedures for setting them would differ significantly from the existing Board processes.

Under the Draft Appointment Model, the Department would propose a *Long-Term Demand Resources Plan* that would provide short-term (three-year) savings goals and budgets and long-term (20-year) budgets and savings goals. The *Long-Term Demand Resources Plan* would be updated every three years, and any party could propose revisions to the Plan. The short-term goals and budgets would be the basis for setting the performance indicators used to assess the EEU's performance. The long-term budgets and savings goals would be used by the EEU for long-term planning purposes as well as providing the basis for bids in the ISO-NE Forward Capacity Market and potential financing agreements.

Under the Draft Appointment Model, the Board would retain responsibility for setting performance indicators. In setting the performance indicators, the Board would solicit comments from interested parties and hold one or more technical workshops to publicly explore the proposals.<sup>9</sup> The Board would continue to assess the performance of the EEU every three years by evaluating the EEU's achievements against the performance indicators.

There appears to be consensus emerging that the elements described above are reasonable.

The two major changes from the current model are the addition of a long-term plan that looks out over 20 years and the procedure for setting the performance indicators. Currently the Board sets the EEU budget for only three years at a time, and establishes the performance indicators through a negotiation process involving only the Department and the entity awarded the contract to serve as Efficiency Vermont.

---

<sup>9</sup>Any interested party could provide proposals or comments.

The establishment of twenty-year goals and budgets could be difficult due to the uncertainty of predicting efficiency markets that far into the future, particularly with respect to policy and technological changes that are not easily foreseeable but could have a significant impact on resource acquisition goals and the EEU budget.<sup>10</sup> Accordingly, as with any long-term forecast, the budget and savings estimates would be expected to be considerably less accurate at the twenty-year mark than at the three-year mark.

However, the July 13 Task Statement identified, as one problematic aspect of the current EEU structure, the difficulties in conducting long-term planning under a three-year contract model. The *Long-Term Demand Resources Plan* could address that concern. For example, with the establishment of the ISO-NE Forward Capacity Market, VEIC has been required to submit bids for years outside the three-year budget period and has requested that the Board provide assumptions for the budget levels for those years. However, absent additional proceedings, the Board did not have sufficient information to provide quantifiable budget levels. Instead, the Board stated that VEIC should assume, for the sole purpose of developing an estimate for the Forward Capacity Market, that the budget would be funded at the 2008 level, even though the actual budget level could be different as a result of the budget determination process. The *Long-Term Demand Resources Plan* would provide more reliable budget estimates.

The Draft Appointment Model is not explicit, but it appears that contested-case procedures would not be used to establish the budget, goals, and performance indicators. This is similar to the process used to set the 2006 - 2008 budget levels and would allow the Board to discuss substantive issues with parties and participants.

The process for establishing budgets, goals, and performance indicators could take substantially more time and effort than the current process. It is possible that a large number of interested parties (including utilities, environmental and business groups, and low-income advocates) would participate. This has the benefit of providing additional information and perspectives for the Board to consider in making its determination. Alternatively, it is possible

---

<sup>10</sup>For example, the phase-out of inefficient incandescent light bulbs required by new federal legislation will likely dramatically impact the EEU's resource acquisition goals, and potentially its budget.



that very few parties would participate and the Board would have limited information and perspectives on the appropriate goals and budgets. A benefit of the Draft Appointment Model is that it envisions one process for establishing budgets, savings goals and performance indicators, rather than conducting these proceedings separately.

Another benefit of the Draft Appointment Model is the value in setting the goals and performance indicators in a public process instead of private negotiations. With a public process, those directly impacted by the EEU and the EEC would have an opportunity to participate.

One of the concerns expressed by some participants regarding a performance-based model is that there is currently no mechanism for determining the efficiency of the EEU itself. In other words, the question is not just whether the model is performance based, but whether the model ensures that efficiency services are delivered on a least-cost basis. It is possible that the provision in the Draft Appointment Model that provides for comparison to other efficiency programs could achieve this result, although additional discussion on this topic is likely to be necessary. In addition, one participant has suggested that a performance indicator be developed that examines the efficient delivery of services.

A possible exception to the performance-based approach is the proposed cost-of-service compensation mechanism described by the Draft Appointment Model.<sup>11</sup> Under this mechanism, certain eligible services, such as the EEU's participation in the Forward Capacity Market and the Vermont System Planning Committee, would be paid for by reimbursing the EEU for its actual costs to perform the functions, plus an operations fee, plus "any earned performance-based payments." The performance-based payments are not described in the Draft Appointment Model. It is possible that certain activities are not appropriate for a performance-based mechanism. In such cases, the cost-of-service compensation may be a better approach than a performance-based model.

---

<sup>11</sup>The Working Group as a whole has not yet discussed the cost-of-service compensation mechanism.

Appointment Term

The Draft Appointment Model does not include a definite termination date to the EEU appointment. Instead, it establishes two automatic review periods and allows any party to request that the appointment be reviewed at any time. The first, termed an *Overall Performance Assessment*, would be conducted at least every six years and would determine "if there are probable net-benefits from going to the market to consider offers from alternate implementation entities."<sup>12</sup> As part of the *Overall Performance Assessment*, the Board would consider the performance of the existing entity, both in terms of its record in meeting goals established by the Board and by comparing the EEU entity with other efficiency programs from around the country. The Board would also solicit comments from the public regarding the EEU's performance and allow interested stakeholders, including the utilities and the Department, the opportunity to participate in a technical workshop. The presumption under the *Overall Performance Assessment* is that the entity performing the function of the EEU would not be replaced unless the Board concluded that the EEU was not performing well.

Every twelve years an *End of Cycle Reconsideration* would be performed wherein the Board would solicit competitive offers from alternative entities to be appointed as an EEU. The Draft Appointment Model provides the Board with an option to "defer the implementation of a competitive solicitation if it finds, after notice and opportunity for comment and through application of established criteria (to be determined), that the benefits in performance likely to result from the process are not worth the cost of going to the market at the specified time."<sup>13</sup> The Board would provide interested stakeholders the opportunity to submit comments and participate in technical workshops.

The Draft Appointment Model provides some increased stability over the current model by essentially establishing a 12-year default term, absent sufficient cause for replacement of the existing entity. In addition, any party could request at any time that the Board initiate a review of

---

<sup>12</sup>Draft Appointment Model at 15.

<sup>13</sup>Draft Appointment Model at 17.

whether the appointment of the EEU should be reconsidered. Any request would have to show cause that such a review would be appropriate and the Board would have the sole discretion to determine whether a review should be initiated. An additional benefit of an increased term is that evaluation of market transformation efforts, which has been difficult because the results of such efforts might not materialize over a three-year horizon, could be facilitated by the possibility of establishing performance indicators that cover a six-year horizon.

The increased stability provided by a longer term also reduces the possibility of frequent competition. The current EEU contractor stated that contract renewal is "a strong motivator to achieve 'stretch' goals and exemplary performance."<sup>14</sup> Some participants expressed concern that decreased competition could decrease the effectiveness of the EEU. One participant stated that, if the term is increased, it might be appropriate for the Department to certify each year that the EEU is fulfilling its requirements and there is no need to explore whether a competitive solicitation process should be carried out.

The July 13 Task Statement identified as problematic the need to bid out the contract due to the fact that only two bids were received during the last bidding cycle. The Draft Appointment Model does not directly address this issue. However, it is possible that, with a 12-year term, there could be increased incentive for companies to respond to a competitive solicitation process.<sup>15</sup> The July 13 Task Statement also provided the example of the EEU's participation in the Forward Capacity Market as problematic under the current model. The expansion of the term to twelve years would not eliminate this problem, but would reduce the frequency of the problem's occurrence.

There does not appear to be consensus emerging regarding the appointment term. Some participants have expressed a preference for an unlimited term because of the stability it would provide to the program (although they have stated that the term provisions contained in the Draft

---

<sup>14</sup>Letter dated August 28, 2007, from VEIC to EEU e-mail service list at 1.

<sup>15</sup>Conversely, it is possible that, as the EEU grows in complexity, particularly if the Draft Appointment Model were implemented, it would be more difficult to find companies with the necessary experience and sophistication to respond to a competitive solicitation.

Appointment Model are an acceptable compromise). Other participants have argued that, while the processes to be used for the *Overall Performance Assessment* and the *End of Cycle Reconsideration* are acceptable, they should be conducted at three and six years, respectively, rather than at the six and twelve years, as proposed in the Draft Appointment Model. These participants assert that the terms proposed by the Draft Appointment Model do not require sufficient competition to ensure that the EEU is as effective as possible. A possible third approach put forth by another participant is that the *Overall Performance Review*, conducted after six years, include a request of interest from potential qualified bidders.

### Transition to New Structure

The Draft Appointment Model provides for a transition to the new structure. Under the transition envisioned by the Draft Appointment Model, the Board would appoint VEIC and BED (the entities currently delivering EEU services) to serve as the EEU until the Board appoints an entity through the appointment process described above. The Draft Appointment Model recommends that the Board extend its current contract with VEIC, with little change to the existing contract goals, budget and performance indicators, to ensure that there is some backstop in case the transition to the Draft Appointment Model are not in place by the end of 2008.

One issue with the transition process described in the Draft Appointment Model is the proposed appointment of VEIC and BED to serve as the EEU. Under Section 209(d)(2), it appears that the Board must follow contested case proceedings to develop an alternate model to deliver efficiency programs. Consequently, the time involved in appointing transitional entities could be substantial. As an alternative, if the Board decides to alter the structure of the EEU it could simply extend the current contract<sup>16</sup> and begin the appointment model once that contract is complete.

Additionally, one of the concerns regarding the contract model is that there are few entities willing to bid against VEIC. A change in the structure could prompt some businesses to

---

<sup>16</sup>Under the existing structure, the Board may extend the contract for up to an additional three years without issuing a request for proposals.

consider putting forth a proposal to be an EEU. However, if VEIC is an incumbent in a new structure, those entities might reexamine whether it is worth investing the significant costs involved in preparing a proposal.

There appears to be consensus that any transition to a new structure deserves careful attention. Participants discussed a few possible approaches to a transition without appearing to conclude that one approach was clearly superior to the others.

### *Number of Entities that Serve as the EEU*

The Draft Appointment Model provides for the appointment of one or more entities to provide energy efficiency programs. This would enable BED to continue to provide EEU services within its service territory, as BED has stated it would like to do.<sup>17</sup> In addition, the explicit allowance of more than one entity also provides the opportunity for any entity to petition the Board at any point to become an EEU.

Although the ability to appoint multiple entities provides the opportunity for increased competition, it could also generate confusion among customers. One of the rationales for creating a state-wide entity is that customers would have one source that could provide answers to their questions. Additionally, VEIC currently holds the tradename "Efficiency Vermont" pursuant to its contract with the Board. Seven years of marketing efforts and word-of-mouth have established Efficiency Vermont as the primary source for Vermont electric customers to learn about options for participating in energy efficiency programs.

Nevertheless, given the increased responsibilities that have been imposed on the EEU (such as geographic targeting and participation in the Forward Capacity Market), combined with the increased responsibilities contained in the Draft Appointment Model (such as responsibility for distributed utility planning and combined heat and power), it is possible that discrete portions of the EEU, for example, participation in the Forward Capacity Market, could be assigned to

---

<sup>17</sup>When the Board created the state-wide EEU, the Board determined that it was appropriate for BED to provide EEU services to its customers. This was a result of BED's desire to continue to offer energy efficiency programs and an acknowledgment that BED had done an exemplary job delivering these services.

other entities without significant disruption in the delivery of efficiency services. Additionally, if the Board were to allow multiple entities to serve as the EEU, and these entities could bid on discrete portions of the EEU, it could encourage additional competition, which has the potential to lower costs for Vermonters. Furthermore, if there were multiple entities serving as the EEU, it could allow for less disruption in the EEU if one of the EEUs were no longer able to perform the necessary functions.

One characteristic of the Draft Appointment Model that is unclear is the procedure to appoint additional entities to serve as the EEU. Although the statute currently provides for multiple entities, the Draft Appointment Model is explicit in allowing any company to request that the Board appoint it as an EEU entity. This feature of the Draft Appointment Model would need additional detail as to what would happen if there was a request to have more than one entity during the six-year cycle and how the new entity would receive funding, as the quantitative performance indicators would already be set.<sup>18</sup> It would also be useful to develop measures to ensure that the appointment of an additional entity would not disrupt existing efficiency programs.

### *Roles of Various Entities*

The Draft Appointment Model summarizes the responsibilities for four sets of entities: the Board, the Department, the EEUs, and the distribution utilities.

The most noticeable change in the role of the Board, under the Draft Appointment Model, would be that the Board no longer contracts with the entity serving as the EEU. However, the Board would continue to set resource acquisition goals, the EEU budget, and the Energy Efficiency Charge ("EEC"), and would review annual plans and reports, set performance

---

<sup>18</sup>There would also be some concern regarding providing ratepayer funding for multiple entities serving as the EEU to represent their interests before the Board, as would be allowed under the Draft Appointment Model.

indicators, manage a contract with the Fiscal Agent, and could contract with an EEU Facilitator (which would essentially replace the Contract Administrator).<sup>19</sup>

The July 13 Task Statement identified the conflicts between the Board's judicial role and administrative role with respect to the EEU. This issue has become more problematic in recent years as the responsibilities of the EEU have grown. The appointment model envisioned by the Draft Appointment Model removes the Board from a contract-management role with the EEU provider and treats the EEU as more similar to a traditional utility, at least with respect to the interaction between the Board and the EEU.

The role of the EEU would continue largely in the same manner as it currently exists. The primary change would be allowing the EEU to participate in regulatory proceedings and lobby before the legislature.<sup>20</sup> There is some concern regarding the EEU utilizing ratepayer funding to advance the EEU's own interests before the Board. However, as others have pointed out, utilities are generally allowed to pass regulatory costs on to ratepayers.<sup>21</sup>

Under the Draft Appointment Model, the Department's role in regulating the EEU would be similar to its public advocate role with respect to actions of traditional utilities. The Draft Appointment Model provides a more explicit description of the Department's responsibilities than currently exists under the contract model.

The Draft Appointment Model would not significantly alter the role of the distribution utilities.

To date, the Working Group's discussions of the roles of the various entities under the model proposed by the Draft Appointment Model have occurred largely in the context of other

---

<sup>19</sup>Working Group Participants also discussed whether, under an appointment model, it might be more appropriate for the Department to contract with an EEU Facilitator.

<sup>20</sup>The Draft Appointment Model expands the role of the EEU in other areas, such as Distributed Utility Planning, Combined Heat and Power, and Demand Response programs. However, there has not yet been sufficient discussion of these issues.

<sup>21</sup>We further note that electric companies in Vermont are generally prohibited from using ratepayer funds for political activities. 30 V.S.A. § 2801(b). Thus, it may be appropriate to preclude the EEU from using any ratepayer funds for lobbying activities.

aspects of the Draft Appointment Model. Accordingly, other sections of this report address emerging areas of consensus regarding these roles.

### Compensation

Under the Draft Appointment Model, there would be two compensation mechanisms for the EEU. The first is termed *Resource Acquisition Compensation*, under which an EEU would be paid the actual costs incurred to secure efficiency savings, an operations fee, and payment for any earned performance incentives. This model represents essentially the same payment system that has been in place for the past seven years.

Additionally, an EEU would receive *Cost of Service Compensation*, which would be budgeted in a not-to-exceed amount, for certain services and initiatives. The *Cost of Service Compensation* would consist of reasonable actual costs incurred, plus an operations fee, plus any performance-based payments. The services eligible for *Cost of Service Compensation* include participation in the Vermont System Planning Committee, participation in the ISO-NE Forward Capacity Market, support of the Department's evaluation activities, and technical assistance for energy code activities.

Currently, the EEU is eligible for performance incentives, in addition to its actual cost for providing services, plus an operations fee of 0.75 %. For certain administrative and information technology services, the not-to-exceed budget established for these services is subtracted from the budget available for achieving resource acquisition goals and the performance indicators are adjusted accordingly. Currently only administrative activities are subject to not-to-exceed budget amounts. It should be noted that VEIC's participation in the Forward Capacity Market ("FCM") is paid for through the proceeds from the FCM.

There has been very little discussion to date regarding the compensation portion of the Draft Appointment Model. It is expected that this discussion will take place in the coming weeks.



### **"Independent" Issues**

Working Group participants raised several issues that are unrelated to the use of a contract or appointment model for the EEU. While the Working Group has held initial discussions regarding these topics, there has not been sufficient time for the Working Group to fully explore these issues. We expect the Working Group will consider these issues more fully in 2008.

The largest group of such "independent" issues are those related to the scope of the EEU's activities. Various participants have suggested that the EEU's role with regard to resource planning, distributed utility planning, combined heat and power, demand response, market transformation (including research and development,<sup>22</sup> market transformation, public information and education, codes and standards, and training and workforce development) and certain program evaluation activities should be changed and/or clarified. Specifically, some participants have suggested that the EEU should:

- play a greater role in resource planning activities in Vermont, including participating in the Vermont System Planning Committee;<sup>23</sup>
- be responsible for developing energy efficiency components of solutions to transmission and distribution constraints and implementing those energy efficiency components that are selected by electric utilities as part of distributed utility planning;
- be allowed a greater role in the development and implementation of combined-heat-and-power projects;
- be allowed a greater role in facilitating demand response by consumers;
- place greater weight on market-transformation activities (as opposed to short-term resource acquisition) and be compensated in a different manner for those activities because those activities typically do not have energy savings directly associated with them; and
- be charged with performing process evaluation and market assessments.

---

<sup>22</sup>In this context, research and development refers to pilot programs, demonstration projects and other applied research and development activities, not to basic materials research.

<sup>23</sup>Pursuant to the Docket 7081 MOU, Efficiency Vermont is a non-voting member of the VSPC. However, the scope of Efficiency Vermont's participation in the VSPC's activities has not yet been finalized.

Working Group participants have expressed their willingness to consider these changes, although there is not yet a consensus about any of them. Several of the changes would increase the EEU's responsibilities. Some participants have recognized that these increases may be appropriate, particularly in the context of improving coordination and planning among the various entities delivering electric services in Vermont, better meeting EEU customer needs, and maximizing public benefits for Vermonters. However, some participants have expressed concerns regarding:

- the effect of shifting responsibility for some aspects of resource planning or distributed utility planning away from the distribution utilities to the EEU;
- whether expanding the EEU's responsibilities beyond the delivery of energy efficiency services will adversely affect its delivery of energy efficiency services;
- whether increasing the EEU's role in demand response will adversely affect the provision of those services by the third-party competitors now doing so; and
- whether increasing the EEU's role in evaluation activities will inappropriately reduce independent oversight of the EEU.

The Working Group has discussed providing greater clarity to the EEU regarding its role in activities related to market transformation. However, the Working Group as a whole has not discussed the proposal included in the Draft Appointment Model for a separate type of compensation for activities related to market transformation.

The Working Group also discussed whether it is appropriate for the EEU to continue to keep all customer-specific information confidential. Some participants stated some customers would find it valuable to know the types of measures and projects that were being installed by similar customers. Other Working Group participants expressed concern that some customers would not participate in the EEU's initiatives if information about their businesses and their participation were made public.

The Working Group also discussed issues related to the EEU Advisory Committee. Participants discussed the way Committee members are appointed and the responsibilities of the Advisory Committee. Some participants noted that having someone other than the Board appoint the members of the Committee would help address the Board's concern about its relationship

with the EEU. Some participants suggested that the EEU should appoint the members of the Advisory Committee in order to give the EEU the ability to make sure the Advisory Committee meets its needs, while others expressed concern that oversight of the EEU would be weakened if the EEU appointed the members of the Advisory Committee. As of December 2007, neither the Working Group as a whole nor the Advisory Committee itself has discussed the specific proposal included in the Draft Appointment Model.<sup>24</sup>

Finally, some participants have expressed concern with continuing to fund the EEU via the Energy Efficiency Charge ("EEC"). These participants have encouraged the Board to seek an alternative funding mechanism for the long term (they recognize that the EEU will continue to be funded via the EEC in the short term). These participants have also urged that alternative EEU program structures be evaluated in part on whether they would make the EEU program more or less amenable to alternative funding mechanisms.

---

<sup>24</sup>We are aware, however, that the Advisory Committee is discussing whether it would like to recommend any changes to its role.